

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARBEN KALAJ,

Defendant-Appellant.

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UNPUBLISHED

March 29, 2007

No. 266514

Wayne Circuit Court

LC No. 04-012441-01

Before: Zahra, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to 12-½ to 30 years' imprisonment for the second-degree murder conviction,<sup>1</sup> to be served consecutive to two years' imprisonment for the felony-firearm conviction (6/22/06 Judgment of Sentence; S II, 16). We affirm.

Defendant's convictions arise from the shooting death of Fred Gjoka at the Port Bar in Hamtramck in the early morning hours of February 22, 2004. According to Fred's brother, Nikolin Gjoka, defendant and Fred argued intermittently throughout the evening about a \$100 debt that defendant owed Fred. After hearing a gunshot, Nikolin turned and saw defendant fire a second gunshot at Fred. Fred and Nikolin then left the bar, and Fred collapsed in the parking lot. In a videotaped statement to the police, defendant maintained that Fred shot at him two or three years previously and that Fred threatened to kill him inside the bar that night. Defendant asserted that he shot Fred when Fred tried to pull out a hammer. Defendant did not know that Fred had a hammer, however, and thought that Fred was pulling out a gun. The trial court, sitting as the trier of fact, disbelieved that defendant acted in self-defense and convicted him of second-degree murder and felony-firearm.

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<sup>1</sup> Defendant was originally sentenced to 14 to 30 years' imprisonment for his second-degree murder conviction (S I, 18; 10/19/05 Judgment of Sentence), but was subsequently resentenced to 12-½ to 30 years' imprisonment after the trial court granted his motion for resentencing (M, 17-18; S II, 16; 6/22/06 Judgment of Sentence).

Defendant's sole argument on appeal is that the prosecution failed to prove beyond a reasonable doubt that he did not act in self-defense. We review de novo claims challenging the sufficiency of the evidence to sustain a verdict to determine whether, when viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found that the essential elements of an offense were proven beyond a reasonable doubt. *People v James*, 267 Mich App 675, 676-677; 705 NW2d 724 (2005), lv den 474 Mich 982 (2005).

"As a general rule, the killing of another person in self-defense by one who is free from fault is justifiable homicide if, under all the circumstances, he honestly and reasonably believes that he is in imminent danger of death or great bodily harm and that it is necessary for him to exercise deadly force." *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002). Once a defendant introduces evidence of self-defense, the burden shifts to the prosecutor to disprove self-defense beyond a reasonable doubt. *James*, *supra* at 677. Circumstantial evidence and reasonable inferences drawn from the evidence may be sufficient to prove the elements of an offense. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996), lv den 455 Mich 870 (1997).

Here, the prosecutor presented sufficient evidence to show that defendant did not act in self-defense. Defendant maintained that he shot Fred because Fred was pulling out a weapon. Although Fred pulled out a hammer, defendant asserted that he thought that Fred might have a gun because Nikolin had a gun earlier that evening. Defendant also maintained that Fred dropped the hammer while running out the door after being shot. As the trial court recognized, defendant's version of events conflicted with the witness testimony. In particular, no one testified that Nikolin had a gun that evening, but testimony did establish that Nikolin had a hammer. Nikolin himself testified that he picked up a hammer that he found on the floor while hiding after defendant shot Fred. Kolja Juncaj, the owner of the bar, testified that he saw Nikolin drop a hammer immediately after the shooting and run out of the bar after Fred. Further, defendant's own witness, Lodovik Dokaj, testified that Nikolin had a hammer before the shooting. Therefore, the trial testimony conflicted with defendant's version of events as alleged in his statement to the police.

In addition, defendant's statement to the police was itself inconsistent. Although defendant claimed that he shot Fred because he thought that Fred was going to shoot him, defendant also stated that the first shot "just slipped." He further admitted in his statement that he was "ready to go start doing [his] time as soon as tonight." Therefore, defendant's statement, in its entirety, did not comport with his theory of self-defense.

The prosecution also presented evidence contradicting the testimony of defense witness Dokaj, who maintained that defendant and Fred engaged in a physical altercation before the shooting. Dokaj was the only witness who testified that a physical altercation occurred. Kevin Stoner, a bar patron, testified that although he heard raised voices arguing before the shooting, he heard nothing indicative of a struggle or fight, and saw nothing after the shooting indicative of a struggle. Likewise, other patrons and Juncaj observed no signs of a physical altercation that night, and defendant made no mention of such an altercation in his statement to the police. Thus, viewed in a light most favorable to the prosecution, the testimony did not establish that a physical altercation occurred.

Finally, defendant's flight after the shooting was inconsistent with his theory of self-defense. Evidence of flight may be indicative of consciousness of guilt. See *People v Compeau*, 244 Mich App 595, 598; 625 NW2d 120 (2001), lv den 465 Mich 861 (2001). Immediately after the shooting, defendant left the bar before the police arrived and hid the gun. He then hid in a truck and slept in his cousin's barn<sup>2</sup> for a few days before moving to Windsor, Ontario, where he was ultimately arrested on September 1, 2004. As such, defendant's actions after the shooting were inconsistent with his theory of self-defense. Accordingly, the evidence, taken in a light most favorable to the prosecution, was sufficient for a rational factfinder to conclude that the prosecution disproved beyond a reasonable doubt defendant's self-defense theory.

Affirmed.

/s/ Brian K. Zahra  
/s/ Richard A. Bandstra  
/s/ Donald S. Owens

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<sup>2</sup> Defendant stated that he slept in a "house where you put pets and animals." (Df Stmt, 25.)